In the High Court at Nainital.

Writ Petition No. 54 (S/S) of 2003

Ashok Negi S/o Suwarn Singh Negi, Retired Sub Post Master R/o Satyeshwar Mohalla, Suman Chowk Purani Tehri, Tehri Garhwal ……Petitioner.

Vs.

1. Union of India, through the Secretary Ministry of Communication, Government of India, New Delhi.
2. The Chief Post Master General, Uttaranchal Circle, Lucknow.
3. The Chief Post Master General, Uttaranchal Circle, Dehradun.
4. The Superintendent of Post Office, Tehri Division, Tehri …….. Respondents.

Sri Pradeep Joshi and Sri B.S. Parihar learned counsel for petitioner.
Sri P.S. Bisht learned counsel for the respondents.

Date of Judgment: 2-4-2004.

ORAL JUDGMENT **(Per: Irshad Hussain, J.)**

This petition under Article 226 of the Constitution of India has been filed with the prayer to issue writ, order or direction in the nature of certiorari quashing the order dated 2-2-1998 (Annexure- 1) passed by respondent no.2 thereby intimating that the petitioner's claim for compassionate appointment had been rejected on the grounds mentioned in the said order and further to issue a writ, order or direction in nature of mandamus commanding the respondents to consider the claim of the petitioner for compassionate appointment.

2- The petitioner's father Sri Suwarn Singh retired on 12-02-1997 before attaining the age of 55 years from the post of Sub-Post Master Narendra Nagar due to eye problem on medical grounds in accordance to the rules of the department. On 18-03-1997 the petitioner moved an application (Annexure No.2) to respondent no.2 through the respondent

no.4 for seeking compassionate appointment under Dependents of Government Servant retired on medical grounds rules. The claim of the petitioner was rejected on the grounds of adequate terminal benefits paid; limited liabilities; family not considered in indigent condition and other income Rs. 2,400/- per annum. The decision taken on 8-1-1998 was communicated to the petitioner vide letter dated 02-02-1998. Aggrieved by the rejection of his claim for compassionate appointment the petitioner submitted an application to respondent no.2 through respondent no.4 on 26-2-1998 (Annexure no. 5) praying for reconsideration of his claim in which the grounds taken for rejection were rebutted and a detailed reply to each ground of rejection was also submitted. The petitioner's father also sent a representation dated 22-7-1998 (Annexure-6) to respondent no.3. Thereafter, the respondent no.3 asked the respondent no.4 to submit a detailed report regarding the financial condition, liabilities, income from unirrigated agricultural land and number of family members dependent on the father of the petitioner. On 2-12-98 respondent no.4 submitted his report (Annexure no.7).

3- On the basis of the report submitted by respondent no.4 the respondents found that petitioner Ashok Singh Negi is entitled for compassionate appointment in the department, but since no post of Postal Assistant was available, the respondent no.2 vide his letter dated 6-7-2000 (Annexure-8) intimated that if he is interested to take up appointment in some other departments, he may given his consent for the same. On receiving the aforesaid letters the petitioner sent his consent on 18-7-2000 (Annexure-9) stating therein that he is ready and willing to take up appointment in any other department also. The respondents however have not considered the claim of the petitioner compassionately and they are paying no heed to the repeated requests made by him.

4- The respondents have through the counter affidavit submitted that claim of the petitioner for compassionate appointment was rejected by the Regional Office, Dehradun on 2.2.1998 on valid grounds; that the cases for appointment on compassionate ground are submitted to C.R.C. which after considering each case on merit finally rejects or allows it

on the basis of available vacancies; that the petitioner, against the decision of Regional Office, made representation to the U.P. Circle Office, Lucknow and the Circle Selection Committee after considering the merits rejected the claim of the petitioner and that no assurance was ever given to the petitioner to reconsider his claim for appointment.

5- The petitioner also filed rejoinder affidavit reiterating the facts narrated in the petition itself.

6- There is no dispute that the benefit of compassionate appointment under relevant memorandum may be extended to a son of a government servant retired on medical grounds under Rule 38 of Central Civil Services (Pension) Rules, 1972 or corresponding provisions in the Central Services Regulations before attaining the age of 55 years. The petitioner is the son of such a government servant and his claim for compassionate appointment was considered by Compassionate Review Committee of the respondents in its meeting held on 8-1-1998, but the claim was rejected on the three grounds mentioned above with reference to the averments in the petition. The decision was communicated vide letter dated 2-2-1998 (Annexure- 1). The grounds of rejection of the claim were that the retired government servant had been provided with adequate terminal benefits; has limited liabilities; family not considered in indigent condition and other income of Rs. 2,400/- per annum available to the retired government servant. The grounds were challenged in the representation made by the petitioner as well as his father, the retired government servant vide Annexure Nos. 5 and 6. It had been stated in the representation that the money received towards retiral benefits had been spent in paying the loan which was taken by the father of the petitioner for marriage of the daughter in the year 1996; that money was also spent in the education of the petitioner and his younger brother both of whom are unmarried and unemployed and the family is residing in a rented accommodation; that one of the uncle who is deaf and dumb is also dependent on the petitioner’s father and reasonable amount is required regularly to maintain the said uncle and provide him with medical treatment; that the father of the petitioner is facing difficulty in discharging the obligations out of the meager pension being

received since retirement and that annual income of Rs. 2,400/- per annum from agricultural land which is un-irrigated is also not sufficient to alleviate the distress of the family. The father of the petitioner also reiterated that the pension and other benefits are not sufficient to meet out the obligations and to maintain his family and the dependents.

7- It need to be stated that on the representations of the petitioner and his father a report was being called for by the Post Master General Dehradun region and in response thereof Superintendent Post Offices, Tehri Circles, Tehri gave a report dated 2.12.1998 (Annexure-7) wherein detail of the benefits received and the financial obligations which the retired government servant has to discharge have been enumerated. This report in fact amply support the grounds raised in the representations by the petitioner and his father and there can be no doubt that the family of the retired government servant had been facing hardship due to his retirement on medical ground and to alleviate the distress of the family appointment of the petitioner on compassionate ground as provided under the government instructions and office memorandum appear justified. This also appears to be the reason that after receipt of the report of the Superintendent Post Offices referred above the Chief Post Master General vide his letter dated 6-7-2000 (Annexure-8) sought consent of the petitioner for appointment in any other department of the Central Government in view of presently no post of Postal Assistant being available in the postal department. The petitioner's family being in indigent condition immediately sent his consent on 18-7-2000 (Annexure-9) informing the respondent no.2 that he is also willing to be appointed in any other department.

8- From above and the material on record it is thus established beyond doubt that the retired government servant is facing great hardship in discharging his social obligations and to maintain himself and other family members and therefore to alleviate the distress of the family, his son the petitioner deserved to be given compassionate appointment by the respondent-authorities. The claim of the petitioner has therefore been rejected on insufficient grounds because as stated above the terminal benefits and other available resources with the

family are not sufficient to lessen the hardship caused to the family of the government servant retired on medical ground.

9- For the reasons aforesaid the order dated 2.2.1998 (Annexure-1) is quashed and the respondent-authorities are directed to reconsider the matter afresh in view of the observations made above within a period of three months. With these directions the writ petition is allowed. No order as to costs.

(Irshad Hussain, J.)

ISB